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Attorney for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

SIDNEY CHEEK,

Plaintiff,
vs.

ADMIRAL VALVE LLC, et al.,

Defendants.

Case No. 3:22-cv-06630-AMO

[Removed on 10-27-22 from the
Superior Court of California, County of
Alameda, Case No. 22CV018248]

Assigned for all purposes to:
The Honorable Araceli Martinez-Olguin
Courtroom 10

**JOINT RULE 26(F) REPORT AND
CASE MANAGEMENT
CONFERENCE STATEMENT**

Action Filed: September 20, 2022
Trial Date: April 22, 2024

Pursuant to Federal Rules of Civil Procedure (“FRCP”), Rule 26(f), Civil Local Rule 16-9 and the Standing Order for All Judges of the Northern District of California: Contents of Joint Case Management Statements, the parties hereby submit the following Joint Case Management Statement. The Meeting of Counsel was held on May 26, 2023.

1. Jurisdiction and Service:

Defendants Lockheed Martin Corporation and ASCO LP removed this action

1 from the Superior Court of the State of California for the County of Alameda under
2 28 USC sections 1442(a)(1) and 1446 and contend that this Court has subject matter
3 jurisdiction over this case because the claims allegedly involve persons acting under
4 the authority of an officer or agency of the United States. 28 U.S.C. § 1442. This
5 Court also has supplemental jurisdiction over related state law claims. 28 U.S.C. §
6 1367.

7 **2. Facts:**

8 **a. Plaintiff's Claims:**

9 Plaintiff claims injuries and damages as a result of Sidney Cheek's diagnosis
10 of mesothelioma. Sidney Cheek was diagnosed with mesothelioma on March 18,
11 2022. Mr. Cheek's mesothelioma was caused by his exposure to asbestos by
12 Defendants, including but not limited to, his exposure to Defendants' asbestos-
13 containing products while serving in the United States Navy and during his use of
14 Talc products containing undisclosed asbestos. Mr. Cheek served in the Navy from
15 approximately May 1974 – January 1995, he was a weapons officer with both hands-
16 on work on missiles and weapons systems aboard nuclear submarines, and a
17 supervising bystander to the work of other sailors maintaining and repairing shipboard
18 equipment. He also personally used talcum powder foot and hygiene products from
19 approximately 1970s-2000s.

20 Plaintiff claims Defendants have committed negligence, are strictly liable
21 (consumer expectation, risk/benefit, and failure to warn), and that the talc product
22 defendants committed fraud (misrepresentation, concealment/non-disclosure, and
23 conspiracy).

24 **b. Defendants' Claims and Defenses:**

25 Defendants have various defenses but, generally, defendants deny Plaintiffs'
26 allegations. Defendants further contend that other entities not parties to the action may
27 have been responsible for Plaintiff's inhalation and retention of asbestos fibers.
28 Certain of the defendants contend that they were acting under the authority, direction,

1 approval, and control of a federal officer or agency of the United States and have no
 2 liability for Plaintiffs' claims based upon the government contractor and/or derivative
 3 sovereign immunity defenses. Defendants may also assert jurisdictional claims.

4 **3. Legal Issues:**

5 **a. Plaintiffs:**

- 6 i. Whether Defendants designed, manufactured, sold, or supplied raw
 7 asbestos, products, equipment, components, parts and/or materials
 8 designed to be used with asbestos, and asbestos containing-products the
 9 Plaintiff worked with or around that increased his risk of cancer.
- 10 ii. Whether any product, equipment, components, parts and/or materials at
 11 issue was defective in design and/or manufacture at the time it left a
 12 Defendant's control.
- 13 iii. Whether Defendants are liable for any failure to warn of the hazards from
 14 working with or around asbestos-containing products, equipment,
 15 components, parts and/or materials.
- 16 iv. Whether any of the Defendants are liable under a strict liability theory of
 17 recovery.
- 18 v. Whether any of the Defendants are liable under a negligence theory of
 19 recovery.
- 20 vi. Whether any of the Talc Defendants are liable under fraud theories of
 21 liability.
- 22 vii. Whether Plaintiff is entitled to the damages he seeks.

23 **b. Defendants:**

24 Defendants assert that the principal legal issues are:

- 25 i. Whether Plaintiff encountered Defendants' products;
- 26 ii. Whether Defendants' products encountered by Plaintiff contained
 27 asbestos;
- 28 iii. Whether Defendants had a duty to Plaintiff;

- iv. Which asbestos-containing products Plaintiff worked with or around resulting in his alleged inhalation and retention of asbestos fibers;
- v. Other sources of asbestos that Plaintiff may have inhaled and retained;
- vi. Plaintiff's diagnosis;
- vii. Whether Plaintiff's medical condition was caused by asbestos;
- viii. Other potential causes of mesothelioma;
- ix. Some Defendants may argue for the application of Federal Maritime law;
- x. The government contractor and/or derivative sovereign immunity defenses; and
- xi. Damages.

4. Motions:

There are no pending motions. The parties anticipate the use of discovery motions only as necessary to obtain responsive discovery, sufficient time to depose witnesses, and possibly regarding whether a document is appropriately designated as protected pursuant to a stipulated protective order. Plaintiff anticipates moving to exclude witnesses and documents not disclosed by defendants in their FRCP Rule 26(a) initial disclosures.

The defendants anticipate filing motions for summary adjudication of issues and/or summary judgment and administrative motions to file documents under seal.

Plaintiff, if discovery and law indicate, may file motions for summary adjudication of issues.

Defendants anticipate filing a motion for bifurcation of punitive damages, if warranted.

All parties anticipate motions *in limine*.

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1 **5. Amendment of Pleadings:**

2 The parties do not presently anticipate motions seeking to add other parties or
3 claims, or to file amended pleadings. Plaintiff anticipates further resolution and
4 dismissal of defendants.

5 **6. Evidence Preservation:**

6 The parties have reviewed the Guidelines Relating to the ESI Guidelines and
7 confirm that they have met and conferred pursuant to FRCP 26(f) and agree to
8 reasonable and proportionate steps to preserve evidence relevant to the issues
9 reasonably at stake in this action.

10 **7. Disclosures:**

11 The parties timely exchanged initial disclosures pursuant to FRCP 26(f).

12 **8. Discovery:**

13 Plaintiff's Deposition:

14 Plaintiff's video-recorded deposition was taken from March 2 – 14, 2023 and
15 concluded.

16 Protective Order:

17 The parties are stipulating to an appropriate protective order for discovery of
18 documents and information that is controlled by the U.S. Arms Export Control Act.
19 The terms of the proposed stipulation and protective order are anticipated to be agreed
20 upon by the parties without the need for judicial assistance.

21 Stipulated Copy Service:

22 The parties stipulated to the use of and request that this Court, as part of its
23 Scheduling Order, authorize the continued use of copy service RecordTrak utilizing
24 the "first-look" procedure used in Alameda asbestos cases for retrieval of personal
25 records. Under that procedure and as more fully agreed to here, Plaintiff has seven
26 calendar days from the date records are received from RecordTrak pursuant to
27 authorization to review the records and determine in good faith that any part of the
28 records are privileged based upon any privacy objection or then-existing privilege

1 under State and/or Federal Law and serve Notice of Redacted Records and an
2 appropriate Privilege Log enabling Defendants to assess the claim of privilege or
3 protection to all parties and to RecordTrak within seven days. If no such notice is
4 received by Defendants and RecordTrak in seven days, RecordTrak is then authorized
5 to release the documents to Defendants.

6 Plaintiff provided authorizations to RecordTrak for the release of documents to
7 Defendants pursuant to the above procedure. Should additional authorizations or
8 information be necessary for RecordTrak to obtain relevant materials in this case,
9 Plaintiff agrees to cooperate with any reasonable request.

10 Plaintiff's Discovery:

11 Plaintiff served verified responses to Alameda Asbestos General Order
12 Standard Interrogatories, authorized retrieval of all medical, union, employment,
13 social security, military, VA, Medicare and EDD records, and produced all such
14 records already in Plaintiff's possession. Plaintiff also produced Naval Archive
15 records in plaintiff's possession. Plaintiff sat for a deposition and the parties
16 stipulated that defendants had 14 hours to cross examine.

17 Plaintiff anticipates that evidence he will seek in discovery will include
18 testimony and depositions of Plaintiff, Sidney Cheek's family members, shipmates of
19 Mr. Cheek, experts, medical professionals and providers, and Defendants' corporate
20 representatives and documents regarding the products at issue. Plaintiff further
21 anticipates that evidence will include his applicable medical records, military and
22 employment records. For the talc defendants, evidence may include samples of
23 products and/or packaging and expert testing. Plaintiff further anticipates that
24 evidence will include documents and records of contracts for sale and purchase, and
25 invoices and receipts for sale and purchase related to defendants' products. Plaintiff
26 believes these documents may also contain the identity of persons knowledgeable
27 regarding Defendants' asbestos-containing products. Plaintiffs also identify
28 Defendants' various Answer to the Complaint, as well as their responses to discovery

1 propounded to Defendants in this and prior litigation, which are within Defendants'
2 possession, custody or control. Plaintiff propounded written discovery and is seeking
3 the depositions of some defendants.

4 Defendants' Discovery:

5 Defendants will retrieve Plaintiff's medical, military, social security, workers'
6 compensation case, bankruptcy trust, and employment records via authorization
7 through RecordTrak. Defendants will conduct written discovery and take the
8 deposition of any product-identification or fact witnesses identified by Plaintiff. In
9 addition, Defendants may need to depose treating physicians and review and/or test
10 any pathology material taken from Plaintiff for purposes of diagnosis, treatment, and
11 prognosis.

12 **9. Class Actions:**

13 This is not a class action.

14 **10. Related Cases:**

15 This case was removed twice, resulting in two District Court case numbers and
16 assigned judges. The cases were consolidated into this, the lower numbered action,
17 prior to transfer to the instant department.

18 **11. Relief:**

19 Plaintiff seeks personal injury damages arising from the development of his
20 mesothelioma that he alleges was caused by exposure to asbestos through Defendants'
21 asbestos containing products and activities. Economic damages will be calculated of
22 Mr. Cheek's lost income, lost earning potential, loss of value of household services,
23 medical bills, and related expenses arising from his diagnosis of mesothelioma by an
24 economist's evaluation, as well proving up the total of the medical bills, including
25 adjusting for agreed to and accepted full payments where so limited by insurer,
26 medicare, VA or other payor and accepted as payment in full by the provider, as well
27 as co-pays and out of pocket expenses. Plaintiff also seeks non-economic damages
28

1 of pain and suffering resulting from his incurable terminal cancer. Plaintiff also claims
2 punitive damages.

3 **12. Settlement and ADR:**

4 Plaintiff's Position:

5 Plaintiff filed an ADR certification that he intends to stipulate to an ADR
6 process, and would request a settlement conference to be set at the close of discovery
7 before a judge assigned to the case for such settlement proceedings. Discovery of the
8 plaintiff's deposition and full and fair document production and depositions of
9 defendants are the key discovery events for plaintiff for this case to resolve short of
10 trial. Plaintiff and defense counsel for several defendants are discussing potential
11 resolution to reduce the number of defendants. The parties agree that this case is not
12 amenable to mediation or arbitration.

13 Defendants' Position:

14 Defendants have filed an ADR Certification opting to discuss an ADR selection
15 with the Court at the case management conference.

16 The key discovery and motion necessary to negotiate a resolution are: 1)
17 completion of all product-identification witness depositions; 2) verified special
18 discovery responses from Plaintiff; and 3) the filing of Defendants' motion for
19 summary judgment/adjudication.

20 The date by which an ADR conference can be completed: November 16, 2023.

21 **13. Other References:**

22 This case is not suitable for reference to binding arbitration, a special master,
23 or the Judicial Panel on Multidistrict Litigation.

24 **14. Narrowing of Issues:**

25 The parties are unaware of issues that can be narrowed prior to the close of
26 discovery. Defendants may request bifurcation on the issue of punitive damages, if
27 applicable.
28

1 **15. Expedited Trial Procedure:**

2 This case is not suitable for an Expedited Trial Procedure.

3 **16. Scheduling:**

4 The operative Scheduling Order issued by Judge Donato is attached as Exhibit

5 A.

6 **17. Trial:**

7 All parties request a jury trial.

8 The parties estimate 15-20 days of trial, excluding deliberations. Plaintiff
9 anticipates calling 7 to 12 witnesses, depending on which defendants remain at trial.
10 Defendants estimate calling 5 witnesses each, depending on which defendants remain
11 at trial and which experts are jointly retained.

12 **18. Disclosure of Non-party Interested Entities or Persons:**

13 • Plaintiff: Other than medical insurance liens, Plaintiff is unaware of a person,
14 firm, partnership, corporation or other entity to has a financial interest in this lawsuit
15 that may be substantially affected by the outcome of the proceeding.

16 Defendants have filed the Certification of Interested Entities or Persons as
17 referenced below:

- 18 • ASCO, LP: *See* ECF Doc. 197. Dismissal Pending
19 • ASCO Power Technologies, LP *See* ECF Doc. 198. Dismissal Pending
20 • Carver Pump Company: *See* ECF Doc. 37.
21 • Chattem Inc.: *See* ECF Doc. 49.
22 • Cla-Val Company: *See* ECF Doc. 15.
23 • Crown Laboratories, Inc. – Dismissal Pending
24 • Curtiss-Wright Corporation: *See* ECF Doc. 249.
25 • Curtiss-Wright Flow Control Corporation: *See* ECF Doc. 70.
26 • DeZurik, Inc.: *See* ECF Doc. 52.
27 • Eaton Corporation: *See* ECF No. 47.
28

- 1 • General Electric Company: *See* ECF Doc. 80.
- 2 • Glaxosmithkline LLC – Dismissal Pending
- 3 • The Gorman-Rupp Company: *See* ECF Doc. 136. Dismissal Pending
- 4 • GSK Consumer Health, Inc. – Dismissal Pending
- 5 • IMO Industries, Inc.: *See* ECF Doc. 46. Dismissal Pending
- 6 • J.T. Thorpe & Son, Inc.: *See* ECF Doc. 95.
- 7 • Lockheed Martin Corporation: *See* ECF Doc. 2.
- 8 • Milwaukee Valve Company, Inc.: *See* ECF Doc. 125.
- 9 • Novartis Corporation: *See* ECF Doc. ____.
- 10 • Redco Corporation: *See* ECF Doc. 16. Dismissal Pending
- 11 • Robertshaw Controls Company: *See* ECF Doc. 29.
- 12 • Sanofi-Aventis U.S. LLC: *See* ECF Doc. 112.
- 13 • Sargent Aerospace & Defense, LLC: *See* ECF Doc. 64.
- 14 • Spence Engineering Company: *See* ECF Doc. 60 Dismissal Pending
- 15 • Spirax Sarco, Inc.: *See* ECF Doc. 196. Dismissal Pending
- 16 • Tate Andale, LLC: *See* ECF Doc. 156. Dismissal Pending
- 17 • Valves And Controls Us, Inc.: *See* ECF Doc. 194. Dismissal Pending
- 18 • Viking Pump, Inc.: *See* ECF Doc. ____.
- 19 • Warren Pumps LLC: *See* ECF Doc. 22. Dismissal Pending
- 20 • William Powell Company: *See* ECF Doc. 55.

21 **17. Professional Conduct:**

22 All attorneys of record for the parties have reviewed the Guidelines for
23 Professional Conduct for the Northern District.

24 **18. Such other matters as may facilitate the just, speedy and inexpensive**
25 **disposition of this matter.**

26 The parties stipulated pursuant to FRCP 5(b)(2)(E) to use File&ServeXpress
27 for the electronic service of documents in this action that are not required to be filed
28

1 on ECF.

2 The filing counsel attests that each of the other Signatories have concurred in
3 the filing of this document.
4

5 DATED: May 31, 2023 SIMON GREENSTONE PANATIER, PC

6
7 By: /s/ Marc Willick
8 Marc Willick
9 Attorneys for Plaintiff

10 DATED: May 31, 2023 GLAZIER LEE LLP

11 By: /s/ Deborah Parker
12 Deborah Parker
13 Attorneys for Defendant LOCKHEED
14 MARTIN CORPORATION

15 DATED: May 31, 2023 BERKES CRANE SANTANA & SPANGLER LLP

16 By: /s/ K. Lynn Finateri Silbiger
17 Robert H. Berkes
18 K. Lynn Finateri Silbiger
19 Davit Shanto
Attorneys for Defendant CARVER PUMP
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20 DATED: May 31, 2023 GORDON & REES SCULLY MANSUKHANI, LLP

21 By: /s/ Theodore C. Yarbrough
22 William L. Coggshall
23 Jacqueline Dubois
24 Theodore C. Yarbrough
25 Attorneys for Defendant CHATTEM, INC. a
26 subsidiary of SANOFI-AVENTIS U.S. LLC,
27 sued individually and as successor-in-interest
28 to BLOCK DRUG CORPORATION,
successor-in-interest to THE GOLD BOND
STERILIZING POWDER COMPANY a/k/a
THE GOLD BOND COMPANY

1 DATED: May 31, 2023

PALMIERI, TYLER, WIENER, WILHELM &
2 WALDRON, LLP

3 By: /s/ John R. Lister

4 John R. Lister

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5
6 DATED: May 31, 2023

CLYDE & CO US LLP

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8 By: /s/ Sheryl Rosenberg

Sheryl Rosenberg

9 Attorneys for Defendant CURTISS WRIGHT
10 FLOW CONTROL CORPORATION f/k/a
11 TARGET ROCK CORPORATION and
CURTISS-WRIGHT CORPORATION

12 DATED: May 31, 2023

CMBG3 LAW P.C.

13
14 By: /s/ Gilliam F. Stewart

Tina Yim

Gilliam F. Stewart

15 Danny S. Kim

16 Attorneys for Defendant DEZURIK, INC.

17 DATED: May 31, 2023

HUGO PARKER LLP

18
19 By: /s/ Bina Ghanaat

Edward Hugo

Bina Ghanaat

20 Attorneys for Defendant EATON
21 CORPORATION

22
23 DATED: May 31, 2023

WFBM, LLP

24
25 By: _____

Charles T. Sheldon

26 Derek S. Johnson

Katherine P. Gardiner

27 Emily E. Anselmo
28

Attorneys for Defendant GENERAL
ELECTRIC COMPANY

DATED: May 31, 2023

BERKES CRANE SANTANA & SPANGLER LLP

By: /s/ Viiu Spangler

Viiu Spangler

Steve S. Spaulding

Attorneys for Defendant J.T. THORPE &
SON, INC.

DATED: May 31, 2023

SELMAN BREITMAN LLP

By: _____

Mark A. Love

Richard M. Lee

Attorneys for Defendant MILWAUKEE

VALVE COMPANY, LLC f/k/a

MILWAUKEE VALVE COMPANY, INC.

DATED: May 31, 2023

GORDON & REES SCULLY MANSUKHANI, LLP

By: /s/ Theodore C. Yarbrough

William L. Coggshall

Jacqueline Dubois

Theodore C. Yarbrough

Attorneys for Defendant SANOFI-AVENTIS

U.S. LLC sued individually and as successor-

by merger to AVENTIS

PHARMACEUTICALS INC.

DATED: May 31, 2023

TUCKER ELLIS LLP

By: /s/ James P. Cunningham

James P. Cunningham

Seema N. Kadaba

Attorneys for Defendant SARGENT

AEROSPACE & DEFENSE, LLC f/k/a

SARGENT ENGINEERING COMPANY

1 DATED: May 31, 2023

GORDON REES SCULLY MANSUKHANI, LLP

2
3 By: /s/ Michael J. Pietrykowski

4 Michael J. Pietrykowski

5 Glen R. Powell

6 Attorneys for Defendant VELAN VALVE
CORP. a/k/a VELAN VALVE
CORPORATION

7 DATED: May 31, 2023

GOLDBERG SEGALLA LLP

8
9 By: /s/ Peter K. Renstrom

10 Peter K. Renstrom

11 Todd M. Thacker

Attorneys for Defendant VIKING PUMP,
INC.

12 DATED: May 31, 2023

CMBG3 LAW P.C.

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14 By: /s/ Gilliam F. Stewart

15 Christine D. Calareso

16 Gilliam F. Stewart

17 Danny S. Kim

Attorneys for Defendant THE WILLIAM
POWELL COMPANY

EXHIBIT “A”

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SIDNEY CHEEK,
Plaintiff,

v.

LOCKHEED MARTIN CORPORATION,
et al.,
Defendants.

Case No. [3:22-cv-06630-JD](#)

SCHEDULING ORDER

The Court sets the following case management deadlines pursuant to Federal Rule of Civil Procedure 16 and Civil Local Rule 16-10. The parties are advised to review and comply with the Court's Standing Order for Civil Cases, Standing Order for Discovery in Civil Cases, and Standing Order for Civil Jury Trials.

Event	Deadline
Add parties or amend pleadings (with the Court's leave, unless permitted as a matter of right under the Fed. R. Civ. P.)	March 31, 2023
Fact discovery cut-off	August 3, 2023
Expert disclosures	August 24, 2023
Rebuttal expert disclosures	September 21, 2023
Expert discovery cut-off	October 19, 2023
Last day to file dispositive and <i>Daubert</i> motions	November 9, 2023
Pretrial conference	April 4, 2024, at 1:30 p.m.
Jury Trial	April 22, 2024, at 9 a.m.

1 All dates set by the Court should be regarded as firm. Counsel may not modify these dates
2 by stipulation without leave of court. Requests for continuances are disfavored, and scheduling
3 conflicts that are created subsequent to the date of this order by any party, counsel or party-
4 controlled expert or witness will not be considered good cause for a continuance. Sanctions may
5 issue for a failure to follow a scheduling or other pretrial order. See Fed. R. Civ. P. 16(f)(1)(C).

6 **IT IS SO ORDERED.**

7 Dated: February 6, 2023

8 
9 _____
10 JAMES DONATO
11 United States District Judge
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PROOF OF SERVICE

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over eighteen years of age and not a party to the within action; my business address is 3780 Kilroy Airport Way, Suite 540, Long Beach, California. I am employed in Los Angeles County, California.

On the date set forth below, I served the foregoing document(s) described as:

**JOINT RULE 26(F) REPORT AND CASE MANAGEMENT CONFERENCE
STATEMENT; [Proposed] ORDER**

On all interested parties in this action by placing a true copy thereof enclosed in a sealed envelope(s) addressed and sent as follows:

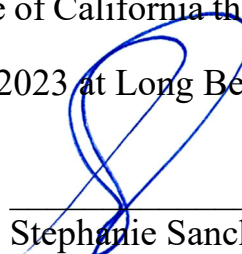
SEE CM/ECF SERVICE LIST

[XX] BY E-SERVICE: I certify that a copy of the document was filed & served on the CM/ECF system for the same day delivery to the offices of the addressee(s) per CM/ECF system Service List.

[] BY E-SERVICE: I caused such document to be transmitted by electronic service via File & ServeXpress for the same day delivery to the offices of the addressee(s).

[XX] [FEDERAL]: I declare under penalty of perjury, under the laws of the United States of America and the State of California that the above is true and correct.

Executed this 31st day of May, 2023 at Long Beach, California.



Stephanie Sanchez